

Filed for intro on 02/24/2003
SENATE BILL 875 By
Ramsey

HOUSE BILL 1568
By McCord

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 3 and Title 70, relative to the Tennessee Off-Highway Motor Vehicle Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by adding sections 2 through 14 of this act as a new, appropriately designated chapter.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Off-Highway Motor Vehicle Act".

SECTION 3. The number of off-highway motor vehicle users in the state is increasing and is growing as a recognized recreational activity while the number of recreational sites is rapidly declining. In the absence of a program to manage off highway vehicle (OHV) use, a number of consequences are accruing to the state, including environmental damage and loss of economic prospects. Therefore, the general assembly finds the need to manage off highway vehicles to maximize economic and recreational opportunities, to protect the environment of this state and to ensure that adequate revenue is generated for such purpose.

SECTION 4. For the purposes of this chapter, unless the context otherwise requires:

(1) "Agency" means the Tennessee wildlife resources agency;

(2) "Commission" means the Tennessee wildlife resources commission;

(3) "Dealer" means a person licensed to engage in the business of selling, offering to sell, soliciting or advertising the sale of motor vehicles, or possessing motor vehicles for the purpose of resale either on that person's own account or on behalf of another, either as that person's primary business or incidental thereto, pursuant to title 55;

(4) "Director" means the executive director of the Tennessee wildlife resources agency, the director's duly authorized representative and, in the event of the director's absence or a vacancy in the office of director, the assistant director of the Tennessee wildlife resources agency;

(5) "Off-highway motor vehicle or OHV" means any motorized vehicle capable of traveling off highways within the state. This term includes all-terrain vehicles, off-road motorcycles, dune buggies, and other four-wheeled vehicles used primarily for off-road activities. The term does not include motor vehicles designed and used primarily for on-roadway activities; and

(6) "Owner" means the person in whose name the motor vehicle is titled.

SECTION 5.

(a) The owner of any off-highway motor vehicle shall annually register the vehicle with the director, in the manner prescribed by the director. Registration information shall include, but is not limited to, the name and address of the owner, the type of vehicle, the license number, if any, the vehicle identification number, proof of registration pursuant to title 55, if applicable, and that all applicable sales taxes and fees have been paid.

(b) Each person, upon filing for registration or renewal, shall pay a registration fee of forty-five dollars (\$45.00) to the director, except that the fee shall be ten dollars (\$10.00) for persons possessing a valid combination hunting and fishing license, hunting license, or sportsman license. The registration fee may be increased no more frequently

than once every twelve (12) months by the commission as provided for in this chapter and shall not exceed the increase in the consumer price index (or successor index) since the last increase was imposed.

(c) Upon the sale or transfer of an off-highway motor vehicle, the dealer may register the vehicle with the director on behalf of and in the name of the vehicle owner, in the manner prescribed by the director. The dealer may also collect and pay the registration fee to the director on behalf of and in the name of the vehicle owner.

(d) Registration information shall include the name and address of the owner, the type of vehicle, the license number, if any, and the vehicle identification number.

(e) Registration shall not be required while an OHV is in use by landowners or lessors, their spouses, or dependent children on land where such landowner or lessor resides upon or manages.

SECTION 6.

The director is authorized to:

(1) Establish and implement an off-highway motor vehicle program by July 1, 2004;

(2) Establish a registration program by February 28, 2004;

(3) In cooperation with vehicle dealers and other governmental agencies, develop a voluntary off-highway motor vehicle education program for existing and potential owners and users;

(4) Develop a voluntary off-highway motor vehicle education program designed specifically to educate dealers and owners on Tennessee's applicable tax provisions and the requirements and penalties associated with the failure to pay such taxes;

(5) Develop guidelines on the proper land selection criteria, trail design and maintenance, and best-management practices for all lands used for off-highway user

purposes. In this connection, the director is authorized to develop public lands and manage for specific uses on public lands;

(6) Study, analyze, and document the impacts of off-highway motor vehicles on surrounding habitat, including habitat loss, resource damage, noise, and vehicle emissions;

(7) Acquire lands, through purchase or lease, for off-highway motor vehicle use. The director is encouraged to use property which is currently owned or leased by the state and which is appropriate for off-highway motor vehicle use before acquiring lands from private landowners. In this connection, the commissioners of environment and conservation, agriculture, and transportation and the heads of other state departments and agencies, where appropriate, are encouraged to make lands under their jurisdiction which are appropriate for OHV use, available to the director for use in the program. It is not the intent to open OHV use on any additional wildlife management areas or refuges without approval of the commission;

(8) Develop and maintain a list of areas within the state that allow the use of off-highway motor vehicles;

(9) Enter into partnerships, contracts, and other management agreements, with state, federal, and local governments and with private landowners to effectuate the purposes of this chapter;

(10) Make inspections and investigations, conduct studies and research, or take such other action as may be necessary to carry out the provisions of this chapter, and rules and regulations promulgated pursuant thereto; and

(11) Exercise general supervision over the administration and enforcement of this chapter and all rules and regulations promulgated thereunder.

SECTION 7.

The commission is authorized to promulgate rules and regulations for the following purposes:

(1) To set, through rules and regulations, capital, registration, and rider fees as established in this chapter.

(2) To establish safety requirements for riders on publicly owned or leased lands. Riders under eighteen (18) years of age shall, at a minimum, wear a helmet.

(3) To promulgate any other rules and regulations deemed reasonable and necessary to effectuate the purposes of this chapter. Such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8.

(a) A dealer shall pay quarterly to the department of revenue a capital fee collected from purchasers of off-highway motorcycles and off-highway vehicles for any sale of an off-highway motor vehicle subject to the certificate of title and special identification device provisions of title 55, in order to effectuate the purposes of this chapter.

(b) Before issuing a certificate of title for any off-highway motor vehicle, the county court clerk shall collect and pay quarterly a capital fee to the department of revenue for any sale of an off-highway motor vehicle subject to the certificate of title and special identification device provisions of title 55, chapter 3. The county court clerk may assess a reasonable clerk's fee in addition to the capital fee.

(c) The capital fee shall be paid on the total purchase price of the off-highway motor vehicle including charges for the off-highway motor vehicle, freight, dealer preparation, and documentation, but does not include charges for accessories and attachments not normally supplied by the manufacturer.

(d) The capital fee is as follows:

OHVs valued at less than \$2,500	\$25.00
OHVs valued from \$2,500 to \$5,000	\$50.00
OHVs valued above \$5,000	\$75.00

(e) The capital fee may be increased no more frequently than once every twelve (12) months by the commission as provided for in this chapter and shall not exceed the increase in the consumer price index (or successor index) since the last increase was imposed.

(f) The department of revenue shall transfer all proceeds collected to the agency on a monthly basis on the first of each month. This shall not prohibit other methods of transfer designed to get the proceeds to the agency more quickly. The department of revenue is directed to utilize the quickest method of transfer if or when one exists.

SECTION 9. The owner of an unregistered off-highway motor vehicle or a motor vehicle designed and used primarily for on-roadway activities shall pay to the director a rider fee in order to ride or drive on publicly-owned or controlled lands that allow off-highway motor vehicles. Rider fees, as established through rule and regulation by the commission, may be on a "per day" or a "multiple day" basis or as deemed appropriate. The rider fees may be increased no more frequently than once every twelve (12) months and shall not exceed the increase in the consumer price index (or successor index) since the last increase was imposed.

SECTION 10. Off-highway motor vehicles purchased and approved exclusively for farm use pursuant to the requirements of title 67, chapter 4, or used exclusively in a commercial business, shall not be subject to the payment of capital fee or registration fee requirements; however, use of such OHV off of the farm property or business site for recreational purposes shall subject the OHV to the requirements of these fees.

SECTION 11.

(a) The funds received by the director or the department of revenue under this chapter shall be used exclusively for the purpose of funding the operation, management, and

enforcement of the off-highway motor vehicle programs authorized under this chapter. The director may use funds collected under this chapter to acquire by purchase, gift, grant, bequest, devise or lease, the fee or any lesser interest in land, development right, easement, covenant, or other contractual right necessary to achieve the purposes of this chapter.

(b) It is the intent of the general assembly that the off-highway motor vehicle program be self-funded. Use of any existing or future agency resources, revenues, or funding not derived by or through the OHV program, to administer or enforce this program shall constitute a diversion of funds under § 70-1-401. Any future federal funds received for OHV or motorized trails shall be credited to the agency for use to administer and enforce the provisions of this section.

SECTION 12. The director may appoint a technical advisory committee to advise the director on off-highway motor vehicles covered by this chapter. The number of committee members shall be determined by the director and shall be composed of representatives of federal, state, and local agencies and of appropriate private organizations, including not-for-profit organizations, dealers, and private citizens. No member of this committee shall be entitled to compensation for duties performed as a member of the committee. No member shall be entitled to reimbursement for travel or any other expenses incurred in the performance of official duties.

SECTION 13. It is unlawful for any person to ride an off-highway motor vehicle upon the land of another without having first obtained the permission or approval of the owners of the land or of the person or persons in charge of the land who have authority from the owner to give such permission.

SECTION 14.

(a) A violation of any provision of this chapter is a Class B misdemeanor. A parent or guardian who knowingly permits a minor to operate an off-highway vehicle in violation of this chapter commits a Class B misdemeanor. A person who commits a second or subsequent

offense commits a Class B misdemeanor with a mandatory fine of two hundred fifty dollars (\$250).

(b) For any conviction of a violation of a provision of this chapter, the court may order restitution for damages caused by the violator or the court may order the violator to restore the property to a state comparable to its original undamaged state. Any restitution ordered shall be paid to the landowner or to the agency if the land on which the offense occurred was owned, leased, licensed to, or in some manner under agency control. Agency control includes, but is not limited to, control through any type of agreement or understanding with any private or governmental entity permitting land to be used in connection with the OHV program.

(c) Upon conviction for any offense for a violation of this chapter or any rule and regulation promulgated pursuant to this chapter, the court may revoke such person's registration or suspend the privilege of obtaining a registration. Any registration so revoked shall be surrendered to the court and transmitted to the arresting officer to be made a part of the prosecution record. Any person whose registration has been revoked or whose privileges have been suspended may be prohibited from obtaining a registration for an OHV for not less than one (1) year.

(d) In connection with any arrest for a violation of sections 13 or 14 of this act, the OHV may be seized and impounded pending a trial on the matter. If the defendant is convicted of a second or subsequent offense of either section, or rule and regulation promulgated in connection with either of these sections, the court shall determine whether or not the OHV shall be declared contraband. When an OHV is declared contraband, the court shall enter an order accordingly and the contraband property shall be placed in the custody of the arresting officer, to be delivered to the executive director, who shall advertise and sell the same at the courthouse in the county in which the offense was committed, as provided by law for sales under execution. The executive director is authorized to delay such advertisement and sale for a

period not to exceed two (2) years from the date of the court order, during which time the OHV may be used in education programs or in law enforcement.

(e) The provisions of this chapter are enforceable and may be prosecuted by all law enforcement officers, including police officers, sheriffs, agency officers, and other peace officers charged with the enforcement of the laws of this state. The primary responsibility for the enforcement and prosecution of this chapter on private lands and on lands under local governmental ownership or control is with local law enforcement officers. The primary responsibility for the enforcement and prosecution of this chapter on public lands not under local governmental ownership or control is with state law enforcement officers, including wildlife resources officers. It is not the legislative intent that the agency enforce trespass laws on private property unless the property is under state control.

SECTION 15. Tennessee Code Annotated, Section 70-7-104(2), is amended deleting the subdivision in its entirety and by substituting instead the following:

(2) Injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee, cave, or any other legal purpose was granted for a consideration other than the consideration, if any, paid to the landowner by the state, the federal government, or any other governmental agency. This subsection shall not apply to off-road vehicle riding; or

SECTION 16. In carrying out the purposes of this act, the wildlife resources commission shall put first and foremost the welfare of wildlife and their environment and shall not degrade nor permit degradation of the commission's purpose and mission to protect and preserve the state's wildlife in accordance with Article XI, Section 13 of the Constitution of Tennessee.

SECTION 17. Tennessee Code Annotated, Section 55-17-102(14), is amended by adding the language "and off-highway vehicles as defined in Section 55-3-101(c)(2)" to the end of the subdivision so that the new subdivision reads as follows:

(14) "Motor Vehicle" means any self-propelled motor-driven vehicle of the type and kind required to be registered and titled under chapter 1 of this title, and includes,

but is not limited to, "motor vehicle" as defined in § 55-1-103; "motorcycle" as defined in § 55-1-103; "truck" as defined in § 55-1-104; "motor home" as defined in § 55-1-104; and "off-highway vehicles" as defined in § 55-3-101(c)(2).

SECTION 18. Tennessee Code Annotated, Section 55-17-114(c), is amended by adding a new subdivision (26), as follows:

(26) Failed, within a reasonable period of time, to provide to the department of revenue, or its successors, designees, or assigns, pertinent information, including, but not limited to, the name, address, phone number, and vehicle identification number, of purchasers of vehicles defined in § 55-3-101(c)(2) purchased after June 1, 1983, who (i) claimed residence in Tennessee at the time of purchase and purchased such "new" or "demo" vehicle from a dealer located outside of the state, or (ii) who purchased such "used" vehicle and subsequent thereto the manufacturer, distributor, distributor branch, factory branch, or officer, agent or other representative comes into possession through any means, including, but not limited to, advice of the purchaser or seller or request by the purchaser for warranty or other repairs or modifications paid for by the manufacturer, distributor, distributor branch, factory branch, or officer, agent, or other representative, pertinent information, including, but not limited to, the name, address, phone number, vehicle identification number, of the purchaser. The department of revenue shall make every reasonable effort to collect sales and use taxes due on such purchases, and shall share this information with the director of the Tennessee wildlife resources agency.

SECTION 19. Tennessee Code Annotated, Section 55-3-119, is amended by deleting such section in its entirety and by substituting instead the following:

Section 55-3-119. The transferee, before operating or permitting the operation of such vehicle upon a highway, or, in the case of vehicles defined in § 55-3-101(c)(2), the lands of the state, shall apply for and obtain a registration and apply for a certificate of title therefore in the manner provided in § 55-4-101, except as otherwise permitted in §§

55-3-120 and 55-3-121, or, in the case of vehicles defined in § 55-3-101(c)(2), as provided in § 55-3-101(c).

SECTION 20. This act shall take effect upon becoming a law, the public welfare requiring it.